

**INFORMATION SHEET**  
**DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS**  
**RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK**  
**COUNTY V. U.S. ARMY CORPS OF ENGINEERS**

**DISTRICT OFFICE:** Omaha District, South Dakota Regulatory Office  
**FILE NUMBER:** 200430357

**REGULATORY PROJECT MANAGER:** Jim Oehlerking **Date:** 10/15/2004

**PROJECT REVIEW/DETERMINATION COMPLETED:** In the office N (Y/N) **Date:** \_\_\_\_\_  
 At the project site Y (Y/N) **Date:** 10/7/2004

**PROJECT LOCATION INFORMATION:**  
 State: South Dakota  
 County: Pennington  
 Center coordinates of site by latitude & longitudinal coordinates: Lat 44-3-7.3973 Long 103-8-21.4470  
 Approximate size of site/property (including uplands & in acres): 85 acres  
 Name of waterway or watershed: Rapid Creek

**SITE CONDITIONS:**

Type of aquatic resource <sup>1</sup>	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash									
Mudflat									
Sandflat									
Wetlands		X/2							
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)									
_____									

<sup>1</sup>Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors <sup>1</sup> :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?			X		
Is or would be used as habitat by other migratory birds that cross state lines?			X		
Is or would be used as habitat for endangered species?				X	
Is used to irrigate crops sold in interstate commerce?				X	

<sup>1</sup>Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

**TYPE OF DETERMINATION:** Preliminary ☒ Or Approved ☐.

**ADDITIONAL INFORMATION SUPPORTING NJD** (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite): The project is to occur over a 200 feet wide by 3.5 mile long band of highway right of way consisting of previously constructed road ditches with wetlands and crossing several drainages and/or historic irrigation ditches. The SD DOT has identified 17 wetlands that will be impacted by the road expansion, of which two wetlands totaling 1.5 acres do not have a surface water connection to waters of the US, do not have a valid ICC connection and are considered non jurisdictional/isolated (SWANCC). The remaining 15 wetlands totaling 6.1 acres are adjacent to, and contiguous with a surface water connection to Rapid Creek and subsequently the Missouri R.